IMPERIAL FOREST OFFICE
Local Reg. No. 70
Date 22-4-99
WORKING PLANS PARTY U.P.

No. 87

IMPERIAL FOREST OFFICE
SOUTHERN CIRCLE
WORKING PLANS PARTY U.P.

MINORS' ESTATES.

1. When the duty of taking charge of a minor's estate devolves upon a public servant in his official capacity it is a public duty and in no sense a private work, and as a general rule no charge should be made to the estate for the services of any public officer so employed, except under the special orders of Government previously obtained.

It may be that a public officer so situated may, on certain occasions, be called upon to undertake a journey beyond the local limits of his charge in the interest of a minor's estate which he would not be otherwise called upon to do, and on such occasions, which are likely to be of rare occurrence, it might be equitable to allow him at the expense of the estate the same travelling allowance to which he would be entitled if called upon to leave his district on Government business; but no such charge should be imposed on an estate under the management of any Government servant in his public capacity without the direct sanction of Government accorded previous to the undertaking of any such journey. (G. R., P. D., No. 801, dated 16th February 1874: *vide* G. M. No. 943, dated 20th idem.*)

2. Under Section 34 of Act VIII of 1890 (Guardians and Wards Act) *all* guardians *other than Collectors*, are bound to render accounts to the Court. It is immaterial whether the money is in the Government treasury or not; indeed as a general rule it will be more for the minor's interests if it be kept in a bank or invested. Apparently, the only case to which this ruling does not apply, is that in which a Collector is appointed as administrator, and his proceedings are subject to the control of the superior Revenue authorities, and not of the Civil Court. In such cases Government are willing to leave it to the discretion of the Collectors as to how the money should be invested. It need not necessarily be brought into the public accounts. (G. Rs. Nos. 3182, dated 24th October 1874, and 3884, dated 23rd December 1874.)

3. A Collector should not have two purses or cash balances in his treasury, and accordingly all money that is paid into a treasury should pass through the public accounts.

Moreover, whenever it is necessary to remove money belonging to a minor's estate from the estate treasury, it must be placed in the public treasury and not elsewhere.

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* "A guardian appointed or declared by the Court shall be entitled to such allowance, if any, as the Court thinks fit for his care and pains in the execution of his duties.

"When an officer of the Government, as such officer, is so appointed or declared to be guardian, such fees shall be paid to the Government out of the property of the ward as the Local Government, by general or special order, directs." (Section 22, Guardians and Wards Act, VIII of 1890.)

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It is not, however, necessary that all collections from a minor's estate should be paid into the treasury of the Collector of the district, merely because the estate may be under the Collector's management. Money which is not paid into the Collector's treasury should not pass through the public accounts. (G. I., F. D., No. 1872, dated 30th June 1875: *vide* G. R. No. 2323, dated 23rd July 1875.)

4. The cost of managing* a minor's estate must be borne by the estate itself, and only the balance of income, after deduction of expenses, can be available for the sávkárs to whom the estate may be indebted. (G. R. No. 6232, dated 4th November 1875.)

As regards estates managed by the Tálukdári Settlement Officer, it was directed in paragraph 3 of Government Resolution No. 4164, dated 28th August 1871, that the charges that would fall on the estates were to be levied according to a percentage on all receipts from estates under direct management. This order was passed with regard to the estates of Tálukdárs and Thákurs, but there is no reason why it should not be applied to all estates put under the management of the Tálukdári Settlement Officer and it should accordingly be applied. (G. R. No. 8550, dated 2nd November 1895, para. 2).

5. As regards the conduct of experiments and the introduction of improvements in estates under the management of the Court of Wards, the Famine Commission in paragraph 13, Part II, Chapter IV, Section II, of their report gave expression to the views which they had formed on this subject in the following terms :—

> "The estates of minors and other legally incompetent persons, which are under the management of the Court of Wards, have been spoken of as affording a proper field for the introduction of agricultural improvements into the country. The principle which should govern the conduct of Government in respect to these estates should be, in our opinion, that the managers it appoints should not make use of their position to carry on merely experimental farming, but should act as an enlightened but prudent landowner would act in respect to his own property, *by utilising the results of science and adopting any well-tested and clearly demonstrated improvement, either* by works for adding to the permanent value of the estate, or by the adoption of improved methods of farming. When, therefore, any improvement in the method of cultivating or preparing any staple crop, or of rearing cattle, or in the construction of implements, *has been proved to be successful*, it might without objection be introduced to the people and popularised by means of its adoption on such estates, but it would obviously be unjustifiable to make

* It has been laid down in G. R., F. D., No. 3679, dated 6th November 1890, that all correspondence indirectly connected with a minor's estate and not of an official character should bear ordinary postage stamps, the cost being defrayed from the estate, and that when the correspondence relates only indirectly to the minor's affairs, as when the order of Government or other higher authority are sought on points of procedure, or when an enquiry is on foot, which is practically one into the conduct of officials connected with the administration of the estate, as also when the District Court is addressed, service stamps should be used and no recovery made from the estates.

their owner responsible for the cost and risk of carrying experiments which the Government would not undertake itself."

The Secretary of State for India, in despatch No. 65, dated the 11th July 1881, confirmed the caution implied in the words noted by italics in the above extract, by desiring that wards' estates "should not be made fields for experiments, or their surplus income applied to any purposes of which the results are uncertain."

The Governor General in Council entirely concurs in the principles to which expression is given in the extract quoted from the report of the Famine Commission, subject to the limitation which the despatch of the Secretary of State very properly imposes. It will be recognised that the practical application of these principles will differ according to the conditions and circumstances of every estate which is brought under the administration of the Court of Wards in different provinces; and accepting, as a rule, that no experiments will be attempted the success of which may not reasonably be expected, and that no schemes involving large expenditure will be undertaken the results of which are uncertain, the Government of India would leave it to each Local Government to consider in what way effect can most advisedly be given to the suggestions brought forward by the Commission.

At the same time the Governor General in Council views with disfavour the policy of hoarding up in Government securities, or other close investments, profits which are made on Court of Wards' estates under the careful management of Government officials, in any case where, subject to the conditions referred to, these can be more usefully applied to the improvement and development of the agricultural resources of the estate. (G. I., R. & A., No. 12-125-134, dated 30th August 1881 : *vide* G. R. No. 5688, dated 29th September 1881).

6. Friends or relatives who are not legally constituted administrators or managers of the estates of minors or lunatics have no power to act in any way for such minors or lunatics, and the Collector would not be justified in accepting a notice of relinquishment or agreement to occupy from such friends or relatives. (G. R. No. 7074, dated 11th October 1882.)

7. In the case of lands held by minors which they wish to resign absolutely, the best plan appears to be to remit the land revenue when the Collector is satisfied that the land has not been cultivated only because the occupant being a minor is not legally able to resign it himself and has no legal guardian to act for him, but intends to resign it as soon as he is able. (Para. 2 of G. R. No. 2407, dated 22nd March 1883.)

8. It is desirable that Collectors in charge of estates of minors situated partly in British territory and partly in Native States should administer the latter as well as the former portion. They should

do so by means of non-official paid agents after obtaining recognition of their function by the Native State Administration which will doubtless be ready to offer all reasonable assistance when addressed for that purpose. This order does not refer at all to Native Chiefs whose estates during a minority would never be in charge of a Collector under the Minors' Act. (G. Rs. Nos. 4657, dated 20th June 1883, and 5626, dated 30th July 1883.)

9. There are certainly objections to the assessment being remitted on land which a minor is at present unable but intends eventually to relinquish. In cases, therefore, when it is obviously not for the benefit of the minor to retain the land, the Collector should simply forfeit the occupancy and remit the land revenue; when it is not so obvious, the Collector should apply to the Civil Court for the appointment of an administrator, and if the administrator when so appointed reports that it is for the benefit of the minor not to retain the land, he should with the consent of the Civil Court relinquish it on behalf of the minor, and then the Collector should remit any land revenue due thereon. (G. R. No. 8078, dated 5th September 1885.)

10. There is no reasonable ground for preventing minors whose estates are under the management of Government officers from having the benefit of Savings Banks. (G. R. No. 1412, dated 20th February 1886.)

11. The practice of leasing minors' estates should not be adopted except for special reasons. In all cases the estates should be subjected to a careful examination and registers of lands and tenures made and, where cash rents are taken, the assessments must be fixed. (G. R. No. 8735, dated 11th December 1886.)

12. Collectors in charge of minors' estates, who may require legal advice, should in all ordinary cases consult local pleaders whose services should be paid for out of the estates. As a general rule they ought to employ the Government Pleaders as a matter of convenience. These are usually competent men, and in any case in which Government was ultimately obliged to intervene, the employment of another pleader might occasion practical difficulties. At the same time Collectors are not absolutely restricted to the Government Pleaders. They are primarily responsible for the management of the estates, and there might be reasons in any particular case which would induce a Collector to consider it undesirable to employ the Government Pleader. It would be impossible to lay down beforehand definite rules as to the fees to be charged by the latter, and if he were given the absolute monopoly of this class of work, difficulties might arise as to the amount of his remuneration. It is left therefore to the Collector to choose his own pleader subject to the understanding that, in the absence of any sufficient cause to the contrary, he should select the Government Pleader; thus no

difficulties would probably arise, as the charges made would necessarily be based on the scale of fees usually claimed by other members of the profession for similar services. Rule 56* of the rules regarding the remuneration and duties of law officers which requires Government Pleaders to advise local officers concerning Government business cannot be considered applicable to private estates under management. If consulted about these, Government Pleaders are entitled to be paid.

Although the Collector should generally employ his own pleader, it must be remembered that Section 15† of Act No. XX of 1864 makes his proceedings subject to the control of the superior Revenue authorities. This section throws on Government certain responsibility for his acts and justifies him in consulting Government and asking for advice in very difficult cases or in regard to matters on which he has reason to think the local opinion inadequate. (G. R. No. 1479, dated 3rd March 1888.)

† *Vide* Section 23 of Act VIII of 1890, and G. N. No. 1246, dated 16th February 1891, Order No. 10, *infra*.

13. The attention of all Collectors should be drawn to their responsibilities in connection with minors' estates and to the necessity that exists for a periodical examination of their accounts either by the Collector himself or by a trustworthy subordinate. (G. R. No. 8317, dated 31st October 1889.)

14. The extension of the period of limitation conceded to a minor by Section 7 of the Limitation Act on account of legal disability is not affected by the fact that during his minority he is represented by a guardian (4 Bom. H. C. Rep., A. C., 199; I. L. R., 4 Mad., 119). The section means that no limitation will apply to a case in which the person suing was disqualified by minority at the time the cause of action arose, provided the suit is brought within the extended period which it allows. A suit by a guardian on behalf of a minor is that of the minor and is governed by the Law of Limitation applicable to the minor; so that a guardian suing for his ward may bring his action at any time whilst the latter's disability continues, or if the guardian fails to bring a suit, the infant may bring one himself after he reaches majority (W. R., 1864, 302; I. L. R., 7 Cal., 137; I. L. R., 1 Cal., 226; 4 Bom. H. C. Rep., A. C., 199). (L. R. No. 807, dated 13th June 1890: *vide* G. R. No. 4486, dated 26th idem.)

15. With reference to Section 23 of the Guardians and Wards Act, 1890, the Governor in Council is pleased to appoint the Commissioner in Sind, and the Commissioners of the Northern, Central and Southern Divisions, as the authorities to whose control respectively the Collectors of that province and of those divisions shall, when appointed or declared by a Court to be guardians, be subject in all matters connected with the guardianship of their wards. (G. N. No. 1246, dated 16th February 1891.)

Act VIII of 1890.

* *Vide* p. 481, Compilation of General Rules.

His Excellency the Governor in Council is pleased to appoint the Tálukdári Settlement Officer to be a Collector under sub-section 6 of Section 4 of the Guardians and Wards Act No. VIII of 1890 with respect to minors of the class of tálukdárs within the districts of Ahmedabad, Kaira and Broach, to whom clause (*a*) of sub-section (1) of Section 2 of the Gujarát Tálukdárs Act No. VI of 1888 applies. The Commissioner, N. D., should be declared the authority to whose control the Tálukdári Settlement Officer shall be subject in all matters connected with the guardianship of his ward. (Para. 1 of G. R. No. 4367, dated 11th June 1895.)

16. The Courts will be at liberty to appoint their Názirs by name, not office, as guardians when this appears expedient and to grant them such allowances under sub-section 1 of Section 22 as may be suitable. (G. R., J. D., No. 4719, dated 3rd September 1891.)

17. In reviewing the Madras Court of Wards Report for the year 1887-88, the attention of Her Majesty's Secretary of State was attracted to the large surplus balance of cash and securities remaining in the hands of the Court after 37 years' management of the Parlakimedi Estate. His Lordship observed that it might be of doubtful benefit to the young heir that he should come into possession of a large balance in cash and securities, as well as a fine estate with a substantial surplus revenue. High authorities, it was remarked, have said that the possession of a large cash balance is not unlikely to lead a young land-owner into extravagance and eventually to his ruin. In Bengal the Court of Wards has been in the habit of investing surpluses accumulated during the period of management in buying additional landed property. It was uncertain, however, whether this form of investment was possible in the case of Parlakimedi, and His Lordship suggested that, 'if good land investments are not to be had, it might be possible and advisable to invest such balances in a branch railway, or some other such work that would permanently benefit the estate and also yield a large and increasing dividend.' Instances were cited of the construction of railways by the Heads of Native States and Principalities to the benefit of their territories and the honour of their families, and His Lordship invited the Government of India to consider the desirability of facilitating the investments of accumulated wards' funds in a similar manner, and expressed his readiness to entertain favourably any project of law that might be required to give the Courts of Wards the necessary authority.

The despatch was circulated to Local Governments and Administrations, who were asked to favour the Supreme Government with their opinions as to the desirability of giving effect to His Lordship's suggestions, and as to the alterations in the existing law that might be required for that purpose. They were also requested to consider the advisability of employing the surplus funds of

wards' estates in the manner suggested, but in combination with neighbouring zamindárs or local capitalists and district boards; and whether, instead of branch railways, the Court of Wards might not in suitable cases undertake the construction of steam tramways, such as have been successfully worked in Northern Italy.

The only provinces in which the wards' estates are sufficiently numerous and important, and the funds which can be accumulated large enough, to enable practical effect to be given to the suggestions of the Secretary of State, appear to be Madras, Bengal, the North-Western Provinces, and Oudh. Except in Burma, where there is no Court of Wards, Local Governments and Administrations are generally of opinion that the powers conferred by the existing law are sufficient to enable them to take the necessary action; and, although there is reason, perhaps, to think that these powers are more restricted than the local authorities seem to imagine, still the Government of India are disposed to think that under the law as it stands the Courts of Wards are empowered to authorize the initiation of every kind of improvement calculated to promote the interests of the wards whose property it is their duty to administer.

The character of such improvements is limited by the canon that they must be for the direct advantage of the estate on which they are undertaken. This rule would include all such undertakings as are described in the definition of 'improvement' in the Land Improvements Loans Act. They would comprise, for example, all works of irrigation by which the rental of the estate would be augmented. And in the case of extensive estates, such as the larger zamindáris of Madras and Bengal, they might include branch railways or tramways, and navigable canals, as well as branch or feeder roads on smaller estates. In exceptional cases even hospitals or schools might perhaps be brought within the definition. Within these limits the desire of the Supreme Government is that the Courts of Wards should, up to the fullest extent which prudence will allow, spend the surpluses accumulating under their management upon the improvement of the estates, and so far as the restrictions placed by the law upon them as trustees permit, upon the amelioration of the condition of the tenantry.

The Governor General in Council, however, has gathered with regret from an examination of the Annual Administration Reports of the Courts of Wards and the reviews of them by the Local Governments and Administrations that the tendency is too often in the contrary direction. The principal cause of the hesitation to invest savings in improvements has doubtless been that caution which is but natural to and proper in a trustee fully conscious of his responsibilities towards his ward. It is, however, apprehended that another reason may be found in the preference of the trustee for the course which, if the safest, also gives the least trouble. It should

not be inferred that the Government of India fail in any way to appreciate the exertions of those officers to whose unremitting and well-directed labours are due the admirable results which have made the Court of Wards one of the most popular institutions in the country and have caused it to be regarded as the salvation of encumbered estates. It need not, however, be feared that the more frequent investment of surplus income on schemes of improvement, large or small, if undertaken for the benefit of the ward and his estate, upon careful deliberation and sound advice, would lessen the popularity of the Court in the eyes of the zamindárs. Such a course of action is, on the other hand, undoubtedly calculated to increase its usefulness and the respect entertained for it by the tenantry.

The Government of India, therefore, consider it desirable to suggest to Local Governments and Administrations that the Courts of Wards should be enjoined, before locking up surplus funds in Government paper or other securities, to ascertain by personal enquiry, reports from managers or otherwise, how far it may be possible to utilise such funds on improvements of direct benefit to the estate. In the case of the richer and more extensive estates, consideration may be given to large and comprehensive undertakings of the character suggested by the Secretary of State in his despatch, such as railways, tramways, tanks, or canals. The Government of India, however, recognise that less ambitious works of agricultural improvement, such as wells, minor distributaries, and roads, are more frequently needed and more within the capacity of the Court of Wards to prosecute with safety and prudence.

The inquiries made have led to some discussion regarding the investment of wards' funds in railways or similar undertakings for the general improvement of the district or province in which the estate is situated. The Government of India consider that investments of this character would not generally be justifiable: cases, however, might occur where, with some such security as a Provincial guarantee, the investment would probably be regarded in a Court of law as sufficiently sound to authorise such a use by a trustee of his ward's money. This has already, in the case of a local railway in one province, been held to justify the subscription of funds from estates under the Court of Wards.

But in the opinion of the Governor General in Council one of the most desirable and safest forms of investment for surplus funds may be found in the liberal supply of advances to cultivators upon the ward's estate, which may be made in the shape of either money, seed or cattle, on the security of long leases, and conditional on the payment of enhanced rent. This practice is already familiar to the people, and would, the Government of India believe, be the means of effecting on these estates, upon a large scale, improvements not only remunerative to the ward, but beneficial also to his tenantry, and would indirectly by the force of example, as well as directly

by increase of production, tend to enhance the efficiency of agricultural operations throughout the country. (G. I., R. & A., No. 2771-79-70, dated 31st December 1891 : *vide* G. R. No. 477, dated 22nd January 1892.)

18. Section 17 (5) of the Guardians and Wards Act VIII of 1890 provides that the Court shall not appoint or declare any person a guardian against his will. The section next following provides that when a Collector is appointed or declared guardian by the Court in virtue of his office * * the order * * shall be deemed to authorize and require the person for the time being holding the office to act as guardian, &c.

Section 18 could be construed as a limitation of, and exception to, the proviso that precedes it, *only* if it would be impossible for both to operate fully.

Maxwell on Interpretation of Statutes, 186 *et seqq.*, 2nd Edition.

But it is perfectly possible to read Section 18 as intended to authorize, irrespective, not of assent, but of change of office.

The inference that this was the *intention* of those who drafted the Act is confirmed from paragraph 5 of the Select Committee's report published in the *Gazette of India* (8th March 1890), page 78, Part V, as follows :—

> "*Section 17.*—Sub-section 5 of this section makes it sufficiently clear that neither a Collector nor any other person can be appointed a guardian against his will."

"To require" is not "to direct", and though each successive Collector may be required to act as guardian and is thereby authorized so to act, if he does not object, he is with the approval of the Local Government entitled to his discharge on application under Section 40 (2) even though the appointment or certificate may have been under Act XX of 1864 (*vide* Section 50 of Act VIII of 1890.)

Act VIII of 1890 on coming into force governed all matters of procedure in proceedings then pending though commenced under Act XX of 1864. (L. R. No. 958, dated 18th June 1892 : *vide* G. R. No. 5518, dated 6th July 1892.)

Maxwell on Interpretation of Statutes, 269, 270.

19. Sections 4 (6) and 40 of Act VIII of 1890 provide amply for the relief of Collectors in any districts, or in regard to any particular estates in which their position as guardians of minors' estates may prove unduly burdensome.

Any cases in which it may appear desirable to relieve Collectors of the work of guardianship, either by conferring powers on Assistant or Deputy Collectors under Section 4, or by taking action under Section 40, will be dealt with as they arise. So long as the Courts are bound under Section 40 to discharge a Collector from guardianship when Government approves of an application being made with that

object in view, it is immaterial whether or not a Court has power to appoint a Collector to be guardian without his consent. Any general dissociation of the Collector from the working of the Act is, however, undesirable not only because the work is better done and the interests of the minors are more secure under the guardianship of the Collector than would otherwise be the case, but also because it would go far towards destroying what remains of the Collector's traditional position as the centre of authority and general protector of the interests of the people in his district.

An amendment of the Land Revenue Code with the object of conferring on the Collector as guardian the powers which the Code gives him as a Revenue officer for the realization of revenue is not necessary or desirable. Any difficulty experienced by the Tálukdári Settlement Officer in collecting rents, &c., can always be met by the issue of commissions under Section 88 of the Land Revenue Code in respect of estates managed by him on behalf of the Collector as guardian. (G. R. No. 7724, dated 20th October 1893.)

20. Loans to landholders and notabilities apart from the provisions of any law constitute one of the classes of loans which may be made by Local Governments without reference to the Government of India. (G. of I. R. No. 13, dated 1st January 1889.)

Loans to landlords and notabilities contemplated in the Resolution of the Government of India quoted above are meant for loans that have in them some purpose of a public or political character. There are the strongest objections to loans being made from the public funds for objects that are of a purely private character, and were the Government to consent to make such loans, the claims upon them would be endless, and they would be interfering in business that is much better left to private lenders. It is also not right that the appointment of a Government officer as guardian in connection with a private individual or estate should enable that individual or estate to obtain assistance from public funds which would not otherwise be available to it. (G. R., F. D., No. 3864, dated 13th November 1895.)